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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/543,949 | 04/06/2000 | Grover John Manderfield, Jr | P99,1996 | 7906 |

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SONNENSCHN NATH & ROSENTHAL
P.O. BOX 061080
WACKER DRIVE STATION
CHICAGO, IL 60606-1080

EXAMINER

ELOSHWAY, NIKI MARINA

| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 07/18/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-3, 5-12, 14-19, 31 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims set forth that the bowl is "configured to withstand a hot fill or retort application without deformation". However the Specification only provides support for the bowl to "resist deformation" (page 7 lines 20-22). A container may resist deformation without preventing deformation completely. For this reason, the limitation that the bowl withstands hot fill or retort application without any deformation is considered new matter.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-3, 5-12, 14-19, 31 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the bowl can withstand all deformations during retort and hot fill applications. It appears that all materials expand and contract depending on the range of temperatures to which they are subjected.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 5-12, 14-17, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kester in view of Cheng (U.S. 5,549,210). Kester discloses the claimed invention except for the plurality of feet at the bottom of the container, except for the diameter being larger than the height of the bowl and except for a lid being rotatably secured to the container. Cheng teaches that it is known to provide a container with a plurality of feet at the bottom (see figures 1-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Kester with the plurality of feet of Cheng, in order to strengthen the bottom wall of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Kester with the diameter being larger than the height, in order to allow the container to be stored in areas with limited vertical space while maintaining the capacity of the container, and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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Cheng also teaches that it is known to provide a container with a closure which is rotatably secured thereto (see figures 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Kester with a lid being rotatably secured to the container, in order to seal the contents of the container within the container.

To the degree set forth in the claim, the Kester reference can withstand deformation because it does not have any joints or flexing points in the body thereof.

8. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kester in view of Valyi (U.S. 5,939,153). Kester discloses the claimed invention except for the container being multi-layered. Valyi teaches that it is known to make a container of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Kester with the container being made of multi-layered plastic, as taught by Valyi, in order to increase the strength of the container.

9. Claims 1-3, 5-12, 14-19, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yazaki et al. (U.S. 4,451,512) in view of Cheng (U.S. 5,549,210) and Kester. Yazaki et al. discloses the claimed invention except for the plurality of feet at the bottom of the container and except for the diameter being larger than the height of the bowl. Cheng teaches that it is known to provide a container with a plurality of feet at the bottom (see figures 1-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Yazaki et al. with the plurality of feet of Cheng, in order to strengthen the bottom wall of the container.

Kester teaches that it is known to provide a container with continuously curved sidewall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Yazaki et al. with the side wall being continuously curved, as taught by Kester, in order to strengthen the sidewall of the container

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Yazaki et al. with the diameter being larger than the height, in order to allow the container to be stored in areas with limited vertical space while maintaining the capacity of the container, and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

To the degree set forth in the claim, the Yazaki et al. reference can withstand deformation because it does not have any joints or flexing points in the body thereof.

Conclusion

10. The new grounds of rejection were necessitated by the amendment filed June 8, 2003.

Accordingly, **THIS ACTION IS MADE NON-FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

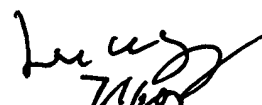
11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Technology Center at (703)872-9302 for regular amendments and (703)872-9303 for after-final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top

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of your cover sheet. Papers submitted via FAX into Technology Center 3700 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.


Niki M. Eloshway/nme
Patent Examiner
July 15, 2003


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700